

AMENDED IN SENATE APRIL 9, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 409**

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**Introduced by Senator Emmerson**

February 20, 2013

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An act to amend Sections 34171, 34178, and 34191.4 of, and to add Section 34004.2 to, the Health and Safety Code, relating to disaster recovery project areas.

LEGISLATIVE COUNSEL'S DIGEST

SB 409, as amended, Emmerson. Disaster recovery project areas: enforceable obligations.

The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined. Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies. Existing law imposes various requirements on successor agencies and subjects successor agency actions to the review of oversight boards. Existing law requires each oversight board to direct the successor agency to, among other things, cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations, as defined.

This bill would provide that a loan provided by a city, county, or city and county to a redevelopment agency that was entered into prior to January 1, 2011, for the purposes of funding the installation and construction of roadways, public improvements, and public utilities in a disaster recovery project area, and for the provision of residential water system or other utility connection subsidies to low- and moderate-income residents of that project area is an enforceable

obligation and may be repaid, as specified. The bill would authorize a city, county, city and county, or housing authority acting in its capacity as the successor to a former redevelopment agency to retain and use those loan proceeds pursuant to the loan agreement and would require the return of any funds previously deposited into the Low and Moderate Income Housing Fund of the former redevelopment agency to the entity that assumed the housing functions of the former redevelopment agency. The bill would also prohibit the Department of Finance, the State Board of Equalization, the State Controller, and a county auditor-controller from imposing any statutory remedies upon a city, county, city and county, or a successor agency and would require the reversal, within 30 days of the effective date of this bill, of any statutory remedy previously imposed. The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and determines all
- 2 of the following:
- 3 (a) The redevelopment and revitalization of areas devastated
- 4 by flood, fire, hurricane, earthquake, storm, tidal wave, or other
- 5 catastrophes is a matter of statewide concern.
- 6 (b) In enacting the Community Redevelopment Disaster Project
- 7 Law, the Legislature intended to facilitate the physical and
- 8 economic recovery of areas devastated by natural disasters and
- 9 other catastrophes.
- 10 (c) The construction and installation of public improvements,
- 11 including roadways, water systems, and other utilities in disaster
- 12 recovery project areas is essential to the economic recovery of
- 13 those areas and the health, safety, and welfare of persons who
- 14 reside within and near those areas.
- 15 (d) The construction and installation of public improvements,
- 16 including roadways, water systems, and other utilities in disaster
- 17 recovery project areas is essential to catalyze the establishment of
- 18 business enterprises within and near those areas.
- 19 (e) The redevelopment and revitalization of disaster recovery
- 20 project areas will result in increased property tax, sales tax, and
- 21 other revenues to local communities, local taxing entities including

1 schools and community college districts, and the State of  
2 California.

3 (f) The failure to permit successor agencies to use the proceeds  
4 of loans originated for the purpose of facilitating the redevelopment  
5 and revitalization of disaster recovery project areas would  
6 significantly delay, and potentially prevent, the revitalization of  
7 those areas and their return to productive economic use.

8 (g) Public works projects planned for the Cedar Glen Disaster  
9 Recovery Project Area were delayed due to a private water  
10 company's financial problems after a devastating forest fire. As a  
11 result, water system and roadway improvement projects are not  
12 complete, and the proceeds of a loan provided by the County of  
13 San Bernardino to fund those public works and water system  
14 connection subsidies remain available for those purposes.

15 (h) In 2003, the Old Fire destroyed 324 homes in the Cedar  
16 Glen community. Lack of an adequate water system and roadway  
17 access were determined to be primary causes of the devastation.

18 (i) The County of San Bernardino established the Cedar Glen  
19 Disaster Recovery Project Area and adopted a plan to assist  
20 property owners, ~~residents~~ *residents*, and business owners to  
21 recover from the fire damage and eliminate blighted conditions  
22 that preexisted the fire and contributed to the scale of its damage.  
23 To assist in the recovery of the project area, the county provided  
24 a \$10,000,000 loan using county general fund revenue to finance  
25 water system and roadway improvements and to fund water system  
26 connection fee subsidies for low- and moderate-income  
27 homeowners.

28 (j) The Department of Housing and Community Development  
29 awarded a State of California Disaster Recovery Initiative grant  
30 to assist in the recovery. The terms of the grant required it to be  
31 spent by April 30, 2009. As a result of this requirement and delays  
32 that resulted from the water company's placement status in  
33 receivership, the expenditure of the county loan proceeds was  
34 delayed, and approximately \$9,000,000 of the loan proceeds remain  
35 unspent.

36 (k) The critical need for water system, roadway, and other public  
37 improvements remains unmet.

38 (l) In connection with the wind-down of the affairs of the  
39 successor agencies, the Department of Finance has determined  
40 that the remaining proceeds loans made to redevelopment agencies

operating in disaster recovery project areas may not be spent to fund the public improvements and related activities for which the loans were originated, and may not be returned to the public entities that originated those loans, but instead must be remitted to the county auditor-controller and distributed to affected taxing entities.

(m) It is in the public interest and the interest of the health, safety, and welfare of persons residing in and near disaster recovery project areas to permit successor agencies to spend the remaining proceeds of loans originated to fund public improvements in those areas for the purposes for which the loans were originated, and to permit the loans to be repaid to the public entities that originated those loans.

SEC. 2. Section 34004.2 is added to the Health and Safety Code, to read:

34004.2. (a) Notwithstanding subdivision (b) of Section 34191.4, or any other law, a loan provided by a city, county, or city and county to a redevelopment agency pursuant to a written agreement entered into prior to January 1, 2011, for the purpose of funding the installation and construction of roadways, public improvements, and public utilities in a disaster recovery project area, and for the provision of residential water system or other utility connection subsidies to low- and moderate-income residents of a disaster recovery project area, shall be deemed to be an enforceable obligation within the meaning of paragraph (1) of subdivision (d) of Section 34171, and may be repaid pursuant to the terms set forth in the written agreement notwithstanding any contrary provision of law.

(b) Notwithstanding subdivision (d) of Section 34177 and Section 34179.6, or any other law, the proceeds of loans described in subdivision (a) shall be used for the purposes for which the loans were made, and the successor agency may retain the proceeds of those loans and enter into agreements for the expenditure of the loan proceeds for those purposes, including, but not limited to, agreements with the city, county, or city and county, that formed the redevelopment agency to which the successor agency has succeeded. These actions shall not be subject to review by the successor agency's oversight board or by the Department of Finance.

(c) Notwithstanding subdivision (d) of Section 34177 and Section 34179.6, or any other law, a city, county, city and county,

1 or housing authority acting in its capacity as the successor to the  
2 housing functions of a former redevelopment agency, may receive  
3 and use that portion of the proceeds of loans described in  
4 subdivision (a) that had been deposited into the Low and Moderate  
5 Income Housing Fund of the former redevelopment agency to  
6 provide residential water system or other utility connection  
7 subsidies to low- and moderate-income residents of a disaster  
8 recovery project area, and the successor agency shall transfer those  
9 funds to the entity that assumed the housing functions of the former  
10 redevelopment agency for that purpose. These actions shall not be  
11 subject to review by the successor agency's oversight board or by  
12 the Department of Finance.

13 (d) Notwithstanding any other law, the Department of Finance,  
14 the State Board of Equalization, the Controller, or the county  
15 auditor-controller shall not have the authority to impose any of the  
16 remedies described in subdivision (h) of Section 34179.6 in  
17 connection with any failure of a city, county, city and county, or  
18 successor agency to remit any portion of the proceeds of a loan  
19 described in subdivision (a) to the county auditor-controller. If the  
20 Department of Finance, the State Board of Equalization, the  
21 Controller, or the county auditor-controller have imposed any of  
22 the remedies described in subdivision (h) of Section 34179.6 in  
23 connection with any failure of a city, county, or city and county  
24 or the successor agency to remit any portion of the proceeds of a  
25 loan described in subdivision (a) to the county auditor-controller,  
26 then any remedy imposed, including, but not limited to, any  
27 reduction in, or offset of, sales and use tax or property tax  
28 allocations, any fine or penalty, and any reduction in the allocation  
29 of property tax to the successor agency shall be rescinded, and all  
30 reductions in or offsets to, any revenue, tax, or fund shall be  
31 returned to the city, county, or city and county or to the successor  
32 agency, as applicable, within 30 days following the effective date  
33 of the act adding this section.

34 (e) Notwithstanding any other law, the Department of Finance  
35 shall not withhold the issuance of a finding of completion to a  
36 successor agency pursuant to Section 34179.7 on the basis of any  
37 failure of the city, county, or city and county or the successor  
38 agency to remit any portion of the proceeds of a loan described in  
39 subdivision (a) to the county auditor-controller.

1 (f) For the purposes of this section, “disaster recovery project  
2 area” means a project area created pursuant to Part 1.5  
3 (commencing with Section 34000).

4 SEC. 3. Section 34171 of the Health and Safety Code is  
5 amended to read:

6 34171. The following terms shall have the following meanings:

7 (a) “Administrative budget” means the budget for administrative  
8 costs of the successor agencies as provided in Section 34177.

9 (b) “Administrative cost allowance” means an amount that,  
10 subject to the approval of the oversight board, is payable from  
11 property tax revenues of up to 5 percent of the property tax  
12 allocated to the successor agency on the Recognized Obligation  
13 Payment Schedule covering the period January 1, 2012, through  
14 June 30, 2012, and up to 3 percent of the property tax allocated to  
15 the Redevelopment Obligation Retirement Fund money that is  
16 allocated to the successor agency for each fiscal year thereafter;  
17 provided, however, that the amount shall not be less than two  
18 hundred fifty thousand dollars (\$250,000), unless the oversight  
19 board reduces this amount, for any fiscal year or such lesser amount  
20 as agreed to by the successor agency. However, the allowance  
21 amount shall exclude, and shall not apply to, any administrative  
22 costs that can be paid from bond proceeds or from sources other  
23 than property tax. Administrative cost allowances shall exclude  
24 any litigation expenses related to assets or obligations, settlements  
25 and judgments, and the costs of maintaining assets prior to  
26 disposition. Employee costs associated with work on specific  
27 project implementation activities, including, but not limited to,  
28 construction inspection, project management, or actual  
29 construction, shall be considered project-specific costs and shall  
30 not constitute administrative costs.

31 (c) “Designated local authority” shall mean a public entity  
32 formed pursuant to subdivision (d) of Section 34173.

33 (d) (1) “Enforceable obligation” means any of the following:

34 (A) Bonds, as defined by Section 33602 and bonds issued  
35 pursuant to Chapter 10.5 (commencing with Section 5850) of  
36 Division 6 of Title 1 of the Government Code, including the  
37 required debt service, reserve set-asides, and any other payments  
38 required under the indenture or similar documents governing the  
39 issuance of the outstanding bonds of the former redevelopment  
40 agency. A reserve may be held when required by the bond

1 indenture or when the next property tax allocation will be  
2 insufficient to pay all obligations due under the provisions of the  
3 bond for the next payment due in the following half of the calendar  
4 year.

5 (B) Loans of moneys borrowed by the redevelopment agency  
6 for a lawful purpose, to the extent they are legally required to be  
7 repaid pursuant to a required repayment schedule or other  
8 mandatory loan terms.

9 (C) Payments required by the federal government, preexisting  
10 obligations to the state or obligations imposed by state law, other  
11 than passthrough payments that are made by the county  
12 auditor-controller pursuant to Section 34183, or legally enforceable  
13 payments required in connection with the agencies' employees,  
14 including, but not limited to, pension payments, pension obligation  
15 debt service, unemployment payments, or other obligations  
16 conferred through a collective bargaining agreement. Costs incurred  
17 to fulfill collective bargaining agreements for layoffs or  
18 terminations of city employees who performed work directly on  
19 behalf of the former redevelopment agency shall be considered  
20 enforceable obligations payable from property tax funds. The  
21 obligations to employees specified in this subparagraph shall  
22 remain enforceable obligations payable from property tax funds  
23 for any employee to whom those obligations apply if that employee  
24 is transferred to the entity assuming the housing functions of the  
25 former redevelopment agency pursuant to Section 34176. The  
26 successor agency or designated local authority shall enter into an  
27 agreement with the housing entity to reimburse it for any costs of  
28 the employee obligations.

29 (D) Judgments or settlements entered by a competent court of  
30 law or binding arbitration decisions against the former  
31 redevelopment agency, other than passthrough payments that are  
32 made by the county auditor-controller pursuant to Section 34183.  
33 Along with the successor agency, the oversight board shall have  
34 the authority and standing to appeal any judgment or to set aside  
35 any settlement or arbitration decision.

36 (E) Any legally binding and enforceable agreement or contract  
37 that is not otherwise void as violating the debt limit or public  
38 policy. However, nothing in this act shall prohibit either the  
39 successor agency, with the approval or at the direction of the  
40 oversight board, or the oversight board itself from terminating any

1 existing agreements or contracts and providing any necessary and  
2 required compensation or remediation for such termination. Titles  
3 of or headings used on or in a document shall not be relevant in  
4 determining the existence of an enforceable obligation.

5 (F) Contracts or agreements necessary for the administration or  
6 operation of the successor agency, in accordance with this part,  
7 including, but not limited to, agreements concerning litigation  
8 expenses related to assets or obligations, settlements and  
9 judgments, and the costs of maintaining assets prior to disposition,  
10 and agreements to purchase or rent office space, equipment and  
11 supplies, and pay-related expenses pursuant to Section 33127 and  
12 for carrying insurance pursuant to Section 33134.

13 (G) Amounts borrowed from, or payments owing to, the Low  
14 and Moderate Income Housing Fund of a redevelopment agency,  
15 which had been deferred as of the effective date of the act adding  
16 this part; provided, however, that the repayment schedule is  
17 approved by the oversight board. Repayments shall be transferred  
18 to the Low and Moderate Income Housing Asset Fund established  
19 pursuant to subdivision (d) of Section 34176 as a housing asset  
20 and shall be used in a manner consistent with the affordable  
21 housing requirements of the Community Redevelopment Law (Part  
22 1 (commencing with Section 33000)).

23 (H) Loan agreements described in subdivision (a) of Section  
24 34004.2.

25 (2) For purposes of this part, “enforceable obligation” does not  
26 include any agreements, contracts, or arrangements between the  
27 city, county, or city and county that created the redevelopment  
28 agency and the former redevelopment agency. However, written  
29 agreements entered into (A) at the time of issuance, but in no event  
30 later than December 31, 2010, of indebtedness obligations, and  
31 (B) solely for the purpose of securing or repaying those  
32 indebtedness obligations may be deemed enforceable obligations  
33 for purposes of this part. Notwithstanding this paragraph, loan  
34 agreements entered into between the redevelopment agency and  
35 the city, county, or city and county that created it, within two years  
36 of the date of creation of the redevelopment agency, may be  
37 deemed to be enforceable obligations, and loan agreements  
38 described in subdivision (a) of Section 34004.2 shall be deemed  
39 to be enforceable obligations.



(3) Contracts or agreements between the former redevelopment agency and other public agencies, to perform services or provide funding for governmental or private services or capital projects outside of redevelopment project areas that do not provide benefit to the redevelopment project and thus were not properly authorized under Part 1 (commencing with Section 33000) shall be deemed void on the effective date of this part; provided, however, that such contracts or agreements for the provision of housing properly authorized under Part 1 (commencing with Section 33000) shall not be deemed void.

(e) “Indebtedness obligations” means bonds, notes, certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment agency, or by a joint exercise of powers authority created by the redevelopment agency, to third-party investors or bondholders to finance or refinance redevelopment projects undertaken by the redevelopment agency in compliance with the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(f) “Oversight board” shall mean each entity established pursuant to Section 34179.

(g) “Recognized obligation” means an obligation listed in the Recognized Obligation Payment Schedule.

(h) “Recognized Obligation Payment Schedule” means the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period as provided in subdivision (m) of Section 34177.

(i) “School entity” means any entity defined as such in subdivision (f) of Section 95 of the Revenue and Taxation Code.

(j) “Successor agency” means the successor entity to the former redevelopment agency as described in Section 34173.

(k) “Taxing entities” means cities, counties, a city and county, special districts, and school entities, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, that receive passthrough payments and distributions of property taxes pursuant to the provisions of this part.

(l) “Property taxes” include all property tax revenues, including those from unitary and supplemental and roll corrections applicable to tax increment.

1 (m) “Department” means the Department of Finance unless the  
2 context clearly refers to another state agency.

3 (n) “Sponsoring entity” means the city, county, or city and  
4 county, or other entity that authorized the creation of each  
5 redevelopment agency.

6 (o) “Final judicial determination” means a final judicial  
7 determination made by any state court that is not appealed, or by  
8 a court of appellate jurisdiction that is not further appealed, in an  
9 action by any party.

10 SEC. 4. Section 34178 of the Health and Safety Code is  
11 amended to read:

12 34178. (a) Commencing on the operative date of this part,  
13 agreements, contracts, or arrangements between the city or county,  
14 or city and county that created the redevelopment agency and the  
15 redevelopment agency are invalid and shall not be binding on the  
16 successor agency; provided, however, that a successor entity  
17 wishing to enter or reenter into agreements with the city, county,  
18 or city and county that formed the redevelopment agency that it  
19 is succeeding may do so upon obtaining the approval of its  
20 oversight board. A successor agency or an oversight board shall  
21 not exercise the powers granted by this subdivision to restore  
22 funding for an enforceable obligation that was deleted or reduced  
23 by the Department of Finance pursuant to subdivision (h) of Section  
24 34179 unless it reflects the decisions made during the meet and  
25 confer process with the Department of Finance or pursuant to a  
26 court order.

27 (b) Notwithstanding subdivision (a), any of the following  
28 agreements are not invalid and may bind the successor agency:

29 (1) A duly authorized written agreement entered into at the time  
30 of issuance, but in no event later than December 31, 2010, of  
31 indebtedness obligations, and solely for the purpose of securing  
32 or repaying those indebtedness obligations.

33 (2) A written agreement between a redevelopment agency and  
34 the city, county, or city and county that created it that provided  
35 loans or other startup funds for the redevelopment agency that  
36 were entered into within two years of the formation of the  
37 redevelopment agency.

38 (3) A joint exercise of powers agreement in which the  
39 redevelopment agency is a member of the joint powers authority.  
40 However, upon assignment to the successor agency by operation

1 of the act adding this part, the successor agency's rights, duties,  
2 and performance obligations under that joint exercise of powers  
3 agreement shall be limited by the constraints imposed on successor  
4 agencies by the act adding this part.

5 (4) A written loan agreement between a redevelopment agency  
6 and the city, county, or city and county that created it as described  
7 in subdivision (a) of Section 34004.2.

8 SEC. 5. Section 34191.4 of the Health and Safety Code is  
9 amended to read:

10 34191.4. The following provisions shall apply to any successor  
11 agency that has been issued a finding of completion by the  
12 Department of Finance:

13 (a) All real property and interests in real property identified in  
14 subparagraph (C) of paragraph (5) of subdivision (c) of Section  
15 34179.5 shall be transferred to the Community Redevelopment  
16 Property Trust Fund of the successor agency upon approval by the  
17 Department of Finance of the long-range property management  
18 plan submitted by the successor agency pursuant to subdivision  
19 (b) of Section 34191.7 unless that property is subject to the  
20 requirements of any existing enforceable obligation.

21 (b) (1) Notwithstanding subdivision (d) of Section 34171, upon  
22 application by the successor agency and approval by the oversight  
23 board, loan agreements entered into between the redevelopment  
24 agency and the city, county, or city and county that created ~~by~~ the  
25 redevelopment agency shall be deemed to be enforceable  
26 obligations provided that the oversight board makes a finding that  
27 the loan was for legitimate redevelopment purposes.

28 (2) If the oversight board finds that the loan is an enforceable  
29 obligation, the accumulated interest on the remaining principal  
30 amount of the loan shall be recalculated from origination at the  
31 interest rate earned by funds deposited into the Local Agency  
32 Investment Fund. The loan shall be repaid to the city, county, or  
33 city and county in accordance with a defined schedule over a  
34 reasonable term of years at an interest rate not to exceed the interest  
35 rate earned by funds deposited into the Local Agency Investment  
36 Fund. The annual loan repayments provided for in the recognized  
37 obligations payment schedules shall be subject to all of the  
38 following limitations:

39 (A) Loan repayments shall not be made prior to the 2013–14  
40 fiscal year. Beginning in the 2013–14 fiscal year, the maximum

1 repayment amount authorized each fiscal year for repayments  
2 made pursuant to this subdivision and paragraph (7) of subdivision  
3 (e) of Section 34176 combined shall be equal to one-half of the  
4 increase between the amount distributed to the taxing entities  
5 pursuant to paragraph (4) of subdivision (a) of Section 34183 in  
6 that fiscal year and the amount distributed to taxing entities  
7 pursuant to that paragraph in the 2012–13 base year. Loan or  
8 deferral repayments made pursuant to this subdivision shall be  
9 second in priority to amounts to be repaid pursuant to paragraph  
10 (7) of subdivision (e) of Section 34176.

11 (B) Repayments received by the city, ~~county~~ *county*, or city and  
12 county that formed the redevelopment agency shall first be used  
13 to retire any outstanding amounts borrowed and owed to the Low  
14 and Moderate Income Housing Fund of the former redevelopment  
15 agency for purposes of the Supplemental Educational Revenue  
16 Augmentation Fund and shall be distributed to the Low and  
17 Moderate Income Housing Asset Fund established by subdivision  
18 (d) of Section 34176.

19 (C) Twenty percent of any loan repayment shall be deducted  
20 from the loan repayment amount and shall be transferred to the  
21 Low and Moderate Income Housing Asset Fund, after all  
22 outstanding loans from the Low and Moderate Income Housing  
23 Fund for purposes of the Supplemental Educational Revenue  
24 Augmentation Fund have been paid.

25 (3) Notwithstanding subdivision (b) or any other law, loan  
26 agreements described in subdivision (a) of Section 34004.2 shall  
27 be repaid pursuant to the terms set forth in the loan agreement.

28 (c) (1) Bond proceeds derived from bonds issued on or before  
29 December 31, 2010, shall be used for the purposes for which the  
30 bonds were sold.

31 (2) (A) Notwithstanding Section 34177.3 or any other  
32 conflicting provision of law, bond proceeds in excess of the  
33 amounts needed to satisfy approved enforceable obligations shall  
34 thereafter be expended in a manner consistent with the original  
35 bond covenants. Enforceable obligations may be satisfied by the  
36 creation of reserves for projects that are the subject of the  
37 enforceable obligation and that are consistent with the contractual  
38 obligations for those projects, or by expending funds to complete  
39 the projects. An expenditure made pursuant to this paragraph shall  
40 constitute the creation of excess bond proceeds obligations to be

1 paid from the excess proceeds. Excess bond proceeds obligations  
2 shall be listed separately on the Recognized Obligation Payment  
3 Schedule submitted by the successor agency.

4 (B) If remaining bond proceeds cannot be spent in a manner  
5 consistent with the bond covenants pursuant to subparagraph (A),  
6 the proceeds shall be used to defease the bonds or to purchase  
7 those same outstanding bonds on the open market for cancellation.

O